UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

October 28, 2014 at 9:31 A.M.

---

1. 11-38555-B-13 JOSEPH/CHANTAL BLAKE
MLO-1

MOTION FOR RELIEF FROM AUTOMATIC STAY , AND/OR MOTION TO OBJECT TO DEFECTIVE ATTEMPT TO AMEND PLAN
9-19-14 [60]

ROBERTA JURASH VS.

Tentative Ruling: The motion is granted in part to the extent set forth herein. The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) to permit the movants to proceed in Jurash, et al. v. Miller, et al., San Mateo County Superior Court case no. CIV-515705 (the "State Court Action") to judgment or settlement and to recover any judgment or settlement against the debtors solely from available insurance proceeds. Nothing in this ruling constitutes a finding of fact or conclusion of law on any fact or issue in the State Court Action. The movants' requests that the court "reject" a supposed "Amended Plan" or "abstain from allowing Debtors' Amended Plan to become Part of their Plan" are denied. The movants' requests for declaratory and injunctive relief are denied without prejudice. Except as so ordered, the motion is denied.

Cause for relief from the automatic stay exists due to the fact that the State Court Action solely concerns issues of state law over which the state court has greater expertise than this court, the presence of numerous non-debtor parties in the State Court Action, and the fact that the outcome of the State Court Action will have minimal if any impact on the administration of the estate in bankruptcy in this case. See In re Kronemyer, 405 B.R. 915 (9th Cir. BAP 2009). The debtors concede that relief from stay as set forth above is appropriate.

The movants' remaining requests for relief are denied or denied without prejudice. First, the movants' requests that the court "reject" a supposed "Amended Plan" or "abstain from allowing Debtors' Amended Plan to become Part of their Plan" are denied. There is no "Amended Plan." The debtors' amendment of Schedule F on July 31, 2014 does not constitute an amendment or modification of their confirmed chapter 13 plan. The movants cite no authority that the filing of an amended schedule is considered an amendment or modification of a plan, or even that the amendment of a schedule constitutes a "request" to the court for confirmation of an amended or modified plan, and the court is aware of none.

The movants' requests for declaratory and injunctive relief are denied without prejudice. The issue which concerns the movants is the effect of

the filing of the amended Schedule F on the movants' claims, if any, against the debtors. Specifically, the issue is whether the listing of a claim held by the movants on the amended Schedule F renders the claim "provided for" by the confirmed chapter 13 plan for the purposes of 11 U.S.C. § 1328(a). See Ellett v. Stanislaus, 506 F.3d 774 (9th Cir. 2007)(citing In re Hairopoulos, 118 F.3d 1240, 1242-43 (8th Cir. 1997)); Northern California Glaziers v. Wolter, 2009 WL 1458272 at *2 (N.D. Cal. 2009). The movants, through their request that the court issue an order stating that claims against the debtors are not "barred" by the State Court Action are essentially asking the court to make a determination of the dischargeability of a debt. That cannot be done on a ruling in connection with this motion, such a request requires an adversary proceeding. Fed. R. Bankr. P. 7001(6). Requests for injunctive relief, such as the movants' request that the debtors be barred from filing future bankruptcy cases, also require an adversary proceeding. Fed. R. Bankr. P. 7001(7).

The court will issue a minute order.

2. 14-26973-B-13 MICHAEL KAHN — MOTION FOR RELIEF FROM AUTOMATIC STAY
9-29-14 [25]

KATHLEEN KAHN AND GEORGIA KAHN VS.

Tentative Ruling: The court construes the motion as being brought under the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance, because the debtor has filed a statement of non-opposition to the motion, the court issues the following tentative ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in order to permit the movants to exercise their state law rights with respect to the debtor's interest in the real property located at 6 Cameron Street, Inverness, California 94937 (the "Property"), including without limitation any right movant Kathleen Kahn has to foreclose and to obtain possession of the Property following foreclosure, all in accordance with applicable non-bankruptcy law. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

The movants allege without dispute that the Property has a fair market value of $450,000.00 and that the debtor holds a one-third interest in the Property, or $150,000.00. The movants further allege without dispute that the Property is encumbered by a first deed of trust held by Bank of America Home Loans with a balance of approximately $173,000.00, and that there is a recorded second deed of trust against only the debtor's interest in the Property with a balance of approximately $100,000.00. The court finds that the debtor does not have an equity in the Property. See Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984)("'equity' refers to the difference between the value of the property and all encumbrances upon it")(emphasis added). The court finds that movants

have satisfied their burden under 11 U.S.C. § 362(g) to show absence of equity in the Property.

Once lack of equity is established, the burden is on the debtor to show that the property in question is necessary to an effective reorganization. 11 U.S.C. § 362(g). "What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that is in prospect. This means...that there must be 'a reasonable possibility of a successful reorganization within a reasonable time.'" United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 375-376, 98 L.Ed.2d 740, 108 S.Ct. 626 (1988). In this instance, the debtor has not met his burden as he has filed a statement of non-opposition to the motion stating that he has no interest in the Property (which the court construes to mean the debtor's interest in the property is over-encumbered) and that it is of inconsequential value to the chapter 13 estate. The foregoing constitutes grounds for relief from the automatic stay under 11 U.S.C. § 362(d)(2).

Additionally, the confirmed plan in this case (Dkt. 5) does not expressly provide for the junior deed of trust on the Property in favor of the movant Kathleen Kahn. The foregoing fails to provide the movant Kathleen Kahn with adequate protection and constitutes grounds for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

The court will issue a minute order.